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UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONALLY
TRAINED LAWYERS
PROGRAM

Legal Research and Writing (ITLP801)

CASEBOOK

Instructor: Wendy Bellack-Viner

2014 – 15

Funded by:

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ITLP Legal Research & Writing 2014-2015

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INTERNATIONALLY TRAINED LAWYERS PROGRAM

Legal Research, Analysis & Writing 2014-15

Syllabus

Course Objectives:

This course is intended to introduce the fundamental elements of Canadian legal research, analysis and writing, including:

- the background of the Canadian governmental system relevant to legal research and analysis
- the Canadian judicial system
- federal and Ontario legislative processes
- the sources of Canadian law
- Canadian legal method for case and legislative analysis
- the use of primary and secondary sources for case law and legislative research
- legal research and analytical processes
- the importance of Canadian legal research, analysis and writing as professional skills and relevant professional practices
- legal writing of case briefs, memoranda, opinions and facts; and
- the application of legal research and analysis skills to solve practical legal problems

This course is also intended to support the students' learning in the other courses of the Internationally Trained Lawyers Program

Requirements and Evaluation:

Like other courses in the Internationally Trained Lawyers Program, the Legal Research, Analysis and Writing course is governed by the University of Toronto's *Code of Behaviour on Academic Matters*, and by the policies described in the ITLP Syllabus. In addition, students are required:

- to attend all classes promptly
- to participate in class discussions and exercises
- to complete a number of writing assignments, some of which will be assigned grades, as indicated in the course syllabus
- to adhere to time deadlines and space limits on assignments

Students are encouraged to discuss course materials, LRW assignments and substantive legal issues generally with each other. Collaboration in this way is a valuable part of the learning process. However, written work submitted in an assignment must be solely the work product of the individual student submitting it. A student may not review the written assignment of another student prior to the submission of that other student's assignment, nor may the student submitting the work invite another student to review his or her assignment prior to its submission.

Students are strongly advised to arrange for the use of a portable computer or tablet for use during the LRW classes. Canadian legal research is, as a matter of practice, dependent on online sources. Consequently, the course makes extensive use of online research tools, and students will benefit most from having the opportunity to use the

tools on their own computers. Students without portable computers or tablets will find themselves at a disadvantage.

Evaluation:

Evaluation shall be based mainly on the following two writing assignments:

Case Brief Assignment

Memorandum of Law assignment

Each of these writing assignments will be marked on a High Pass/Pass/Fail basis.

In addition, students will be expected to complete in-class small assignments either individually, or if required, in small groups.

Students will not be allowed to apply for internships if they have not received a mark of at least “Pass” on both assignments.

Failure to submit an assignment on the designated due date will result in a Fail mark, unless the professor or Director of the ITLP grants an extension.

Course and Supplementary Materials:

Best, Catherine. *Best Guide to Canadian Legal Research*, www.legalresearch.org (hereinafter “Best”)

Blaikie, David L, Cromwell, Thomas A. and Pink, Darrel, *Why Good Lawyers Matter* (Toronto: Irwin Law, 2012) (available in hard copy and electronically in U of T Library) (hereinafter “Blaikie”)

Bora Laskin Law Library. *Legal Research Tutorial*, www.library.law.utoronto.ca

Cromwell, Thomas A. *Effective Written Advocacy*, Student Edition (Aurora: Canada Law Book, 2008) (hereinafter “Cromwell”)

Department of Justice Canada, *Canada’s System of Justice*, 2005, <http://www.justice.gc.ca/eng/csj-sjc/just/img/courten.pdf>

Department of Justice Canada, *Canada’s Court System*, 2013 <http://justice.gc.ca/eng/csj-sjc/ccs-ajc/index.html>

Fitzgerald, Maureen F. *Legal Problem Solving: Reasoning, Research and Writing*, 5th ed. (Toronto: LexisNexis Canada Inc., 2010). (hereinafter “Fitzgerald”)

Fitzgerald, Patrick and Wright, Barry. *Looking at Law: Canada’s Legal System*, 5th ed., (Toronto: Butterworth’s, 2000). (hereinafter “Looking at Law”)

Forsey, Eugene. *How Canadians Govern Themselves*, 8th ed., 2012 [1980 original] , online at <http://www.parl.gc.ca/about/parliament/senatoreugeneforsey/book/>

Gerald Gall, *The Canadian Legal System*, 5th ed. (Toronto: Thomson Carswell, 2004). (hereinafter "Gall")

Government of Canada, "Fact Sheet – Reference to the Supreme Court of Canada on Senate Reform", www.democraticreform.gc.ca/eng/content/fact-sheet-reference-supreme-court-canada-senate-reform

Irwin Law Canadian Online Legal Dictionary, www.irwinlaw.com/cold

Jessie J. Horner, *Canadian Law and the Legal System* (Toronto: Pearson Education Canada, 2007) (hereinafter "Horner")

Laskin, John J.A., "Forget the Wind Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums", (1999), www.ontariocourts.ca/coa/ps/speeches/forget.htm (Under Publications & Speeches - Archives)

Law Society of Upper Canada. *Rules of Professional Conduct*, Rule 2.01(1) (a), (b), (c)

Legal Writing Institute, "Law School Plagiarism v. Proper Attribution", [www.law.uky.edu/files/docs/LegalWriting/plagiarism v proper attribution.pdf](http://www.law.uky.edu/files/docs/LegalWriting/plagiarism_v_proper_attribution.pdf)

McCormack, Nancy, *et al. The Practical Guide to Canadian Legal Research*, 3rd ed. (Toronto: Thomson Reuters Canada Limited, 2010) (hereinafter "McCormack")

McGill Law Journal, eds. *Canadian Guide to Uniform Legal Citation*, 7th ed. (Toronto: Thomson Carswell, 2010). (hereinafter "McGill Guide")

Mirow, Matthew C., "Plagiarism: A Workshop for Law Students", <http://lwionline.org/publications/plagiarism/lawschool.pdf>

Ontario Legislature, "How an Ontario Bill Becomes Law: a guide for legislators and the public", 2011, <http://www.ontla.on.ca/lao/en/media/laointernet/pdf/bills-and-lawmaking-background-documents/how-bills-become-law-en.pdf>

Ontario Legislature, "When do Ontario Acts and Regulations come into force?" (rev. 2011) http://www.ontla.on.ca/bills/general-information/files_pdf/files_en/rp.b31.pdf

Ontario Ministry of the Attorney General, "Glossary of Terms", www.attorneygeneral.jus.gov.on.ca/english/glossary

Parliament of Canada – "General Information on Legislation" <http://www.parl.gc.ca/LEGISinfo/Faq.aspx?Language=E&Mode=1>

Parliament of Canada, *"Parliament of Canada-Legislative Process",
http://www.parl.gc.ca/compendium/web-content/c_g_legislativeprocess-e.htm

Tjaden, Ted. *Legal Research and Writing*, 3rd ed. (Toronto: Irwin Law Inc., 2010);
companion website: www.legalresearchandwriting.ca (hereinafter "Tjaden")

Waddams, Stephen. *Introduction to The Study of Law*, 7th ed. (Toronto: Thomson Carswell, 2010) (hereinafter "Waddams")

Course Schedule:

The first class will take place in an orientation period prior to the beginning of the students' substantive law courses. Seven subsequent classes will be held weekly in Term 1 in May-July. Four additional sessions will be held in each of Term 2 from August-September and Term 3 in November-December. An additional class will be held prior to the internships. Classes will vary between two and three hours.

The following course schedule is subject to changes to include training in online legal research tools and other developments.

Casebook Materials:

References marked below with an asterisk (*) are included in the course casebook. References marked below with two asterisks (**) will be available through links on Blackboard. Other referenced materials are either available online or at the Bora Laskin Law Library, from the Course Reserve materials.

I Introduction to Canadian Government and Law

Class 1 – Introduction to Course and to the Canadian Governmental System and Canadian Law

(2 hrs.)

A.-Introduction to course: legal research and writing, course requirements

B. Introduction to Canadian Governmental System

- federal system – background to the *Constitution Act, 1867*

- legislative, executive and judicial branches of government

- parliamentary sovereignty and constitutional supremacy

- the role of the Crown – federal and provincial

C. Introduction to Canadian Law

a.What is “law” in Canada?

b. Primary sources of law, and the hierarchy of authority among sources

c. the divisions of law - meaning of private and public law, and substantive and procedural law, in Canada

d. common law and civil law in Canada

e. law and equity

D. Introduction to the Role of Lawyers in Canada

- regulation of lawyers – role of the Law Society of Upper Canada

- Rules of Professional Conduct

- the role of lawyers

- lawyers and legal research – professional responsibility

Learning Objectives:

- acquire understanding of Canadian governmental system, in a political science/civics sense, as the background for the legal system

- acquire understanding of the role of law in Canada, the sources of primary law and the hierarchy among them, and the divisions of law in Canada

- acquire introductory understanding of the regulation, and role of lawyers in Canada

References:

Department of Justice, *Canada's System of Justice*

Eugene Forsey, *How Canadians Govern Themselves*, 8th ed., 2012 [1980 original]

*Fitzgerald, Ch. 4, Introduction to Law and Legal Materials, pp. 31-39

*Gall, pp.28 (Fig. 2.5), 29 (Fig. 2.6, 2.7), 32 (terminology);

**Looking at Law*, Ch. 2, “How Canada Received its Law”, pp. 17-24

Downie, Jocelyn and Devlin, Richard, “The Great Canadian Lawyer: A Manifesto, Eh?” , pp. 149-165 in Blaikie

*Law Society of Upper Canada, Rules of Professional Conduct, Rule 2.01(1)(a), (b), (c)

Class 2 – Introduction to the Canadian Judicial System; The Elements of a Case and Case Law Organization (3 hrs.)

- The Canadian Judicial System and Jurisdiction
- Judicial appointments and independence
- The Binding Effect of Cases and Statutes – binding and persuasive authority, precedent and *stare decisis*
- in-class exercises re binding and persuasive authority and re court jurisdiction
- What are the elements of a case?
- identification of cases
- law reports in Canada – print
- electronic sources – canlii, Westlaw, Quicklaw (intro only)
- unreported decisions

- Discussion – Canadian federalism and the role of the courts: Reference to the Supreme Court of Canada on Senate Reform;
- Law Library tour

Learning Objectives:

- acquire understanding of the federal and provincial (Ontario) judicial systems, including the jurisdiction of the various courts, the hierarchy of authority of courts' decisions vis-à-vis other courts, and the role of precedent and *stare decisis*
- identify the formal elements of a printed and electronic case (eg. court, date, judge(s), headnote, if any, listing of cases and statutes cited, if included, etc.)
- how to identify the key structural elements of a case (facts, issues, decision, ratio, etc.)

- understand the difference between print and electronic cases and sources
- understand the basic Canadian print reporter and electronic systems
- know how to identify a case – year, court, etc.

- become familiar with general print sources available in law library

References: Department of Justice Canada, *Canada's Court System Reference re Supreme Court Act*, ss. 5 and 6, 2014 SCC 21

*Gall, p. 142-3, Fig. 5.1

**Tjaden, ch. 4, pp. 94-98; pp. 101-2

*Best, link to P. Perell, "*Stare Decisis* and Techniques of Legal Reasoning and Legal Argument", 1987

*Waddams, pp. 86-87

*Horner, pp. 240-42

*Fitzgerald, Ch. 9, pp. 191-96, p. 227 (App. 9A: Format of a Printed Decision)

*McCormack, Ch. 11, pp. 177-182 (list of abbreviations for reports)

Government of Canada, "Fact Sheet – Reference to the Supreme Court of Canada on Senate Reform



II Primary Sources of Law: Cases and Legislation/Legal Method

Class 3 – Cases- Introduction to Case Analysis; Case Law Citation and Case Briefing

(3 hrs.)

- how to read a case – methods for note-taking (eg. colour coding), analysis
- common law reasoning
- Citation-the McGill Guide
- introduction to writing – legal writing purposes
- use of sources: attribution and plagiarism
- role of case briefs
- model brief

Learning Objectives:

- case analysis – how to critically read cases
- learn the standards for traditional and neutral case citation
- understand the rules for proper attribution of sources, and what constitutes plagiarism
- understand the use of case briefs
- reinforce familiarity with appropriate case reading
- learn basic legal writing practice

References:

- *Best, “Weigh the Cases, Analyse Cases, Read Cases Critically”
 - Legal Writing Institute, “Law School Plagiarism v. Proper Attribution”
 - Mirow, Matthew C., “Plagiarism: A Workshop for Law Students”
 - *Fitzgerald, p. 239- Briefing Cases, p. 251 (App. 10A : Sample Case Brief)
 - *Bellack-Viner, *Eltaib v. Touram* – sample case brief
-

Class 4– An Introduction to Legislation (3 hrs.)

- the legislative process – Canada and Ontario
- the role of legislation
- organization of legislation – federal and provincial (government and commercial websites), print versions

Learning Objectives:

- understand the federal and Ontario legislative processes and the significance of the various states in the processes
- understand the structure of a statute (title, table of contents, explanatory notes, definitions, margin notes)
- become familiar with the various aspects of the federal and Ontario legislative websites

References:

- *Waddams, Ch. 9 – Statutes, pp. 97-101

Federal:

Parliament of Canada, "Legislative Process"

Parliament of Canada – "General Information on Legislation"

Ontario:

"How an Ontario Bill Becomes Law"

"When do Ontario Acts and Regulations come into force?"

Class 5– *Legislation: Print Sources, Citation and Introduction to Statutory Analysis* (3 hrs.)

-print sources

-legislative citation

-how to parse a statute – introduction to statutory analysis – examine a statute

Exercises:

-identifying case structure, legislation structure, citation of cases and legislation

-finding a case/statute, given citations and/or find a citation, given case/statute name

-finding a statute by citation, and summarizing it

Learning Objectives:

-become familiar with the print sources available for legislative research

-learn the standards for legislative citation

-understand how to read a statute and basic analytical approaches

References:

Fitzgerald, Ch. 7, pp. 111-120, 140-41

McCormack, pp. 252-3, 258 – App. 1 – Links to Legislative Materials – Canada, Ontario

III Legal Research and Writing

Class 6 – *Case Law Research* (3 hrs.)

-the importance of legal research – professional responsibility and liability issues; comparing the role of legal research in other jurisdictions

-the legal research process

-the use of secondary sources – texts, encyclopedia, using Westlaw and Quicklaw (using a fact situation)

-updating cases – procedural history and noting-up/judicial consideration

Last hour: legal research exercises -

Find case using secondary source; noting up a case

Learning Objectives:

-understand the role of legal research in Canadian legal practice

- understand the legal research process of finding cases, analysis and synthesis of cases
- become familiar with the main secondary sources for case law research
- learn how to get the procedural history of a case and its judicial consideration – print and electronic

References:

Law Society of Upper Canada, Rules of Professional Conduct, Rule 2.01(1)(a), (b), (c) Fitzgerald, p. 29, App. 3A – Summary of Steps of Issue Determination; pp. 102-105; pp. 197-217 – How to Find and Update Cases;

**Tjaden, pp. 108-109;

*Best, “Research Essentials: Plan and Organize Your Research”

Class 7 – Legislative Research (3 hrs.)

- the legal research process for legislation
- how to find statutes (using a fact situation)
- research of legislative history
- research of statutory amendments and repeals
- researching Bills

Last hour – legal research exercises -

Find a statute – see if any amendments, bills

BC Courthouse Libraries, Video Tutorial on “Tracing Legislation Back”

BC Courthouse Libraries, Video Tutorial on “Noting up Legislation”

Learning Objectives:

- learn how to find a federal/Ontario statute from a fact situation
- understand the importance of legislative history, and how to find it
- understand the importance of researching statutory amendments, repeals and Bills, and learn how to find them

References:

Fitzgerald. pp. 124-34, 136-39

**Tjaden, pp. 66-74

Class 8 – Statutory Interpretation; Putting Together Case Law and Legislative Research (3 hrs.)

- rules of statutory interpretation – common law, legislative
- by the courts – judicial consideration
- in class exercise – statutory interpretation

BC Courthouse Libraries, Video Tutorial on “Legislative Intent”

- working with legislation and relevant cases
- using annotated statutes

Learning Objectives:

- learn the legislative and common law rules for statutory interpretation
- learn the role of the courts in statutory interpretation
- reinforce understanding of interconnections between legislative and case research through practical examples

References:

*Waddams, pp. 101-6

**Tjaden, pp. 82-89

Class 9 – *Researching Regulations; Selected Research Issues* (2 hrs.)

- the role of regulations
- the regulation-making process
- researching regulations
- discussion of the Reference to the Supreme Court of Canada on Senate Reform

Learning Objectives:

- understand the role, and importance of regulations in the legislative process and legal process
- learn how to research regulations

References:

Fitzgerald, pp. 187-189 (App. 8A: Checklist: How to Find and Update Regulations)

*McCormack, pp. 263-274

Class 10 – *Legal Writing: Memo Writing I* (2 hrs.)

- the role of legal memoranda in practice
 - the structure of legal research memoranda
 - writing style in memoranda
 - organizing research
 - outlines, checklists
 - attribution & plagiarism: review
- (includes 1 hour Tutorial for 1/3 of class)

Learning Objectives:

- learn the practices for good legal writing – eg. simplicity, directness
- learn the structure of a legal research memorandum
- become familiar with objective writing
- become familiar with the IRAC approach to memorandum writing

References:

*Fitzgerald, pp. 269-74 (App. 11A: Sample Memorandum of Law), 277-78 (App 11C: Legal Writing Checklist), 285-89 (App. 12A: Sample Research Plan)

Class 11 – *Other Secondary Research Sources and the Role of Foreign Legal Research in Canadian Legal Research; Selected Research Issues* (2 hrs.)

Learning Objectives:

- learn how to use additional secondary sources and understand their relative values as research sources
- understand the ways in which Canadian legal research may involve foreign legal research

References:

Electronic: Hein, Legal Trac, Google Scholar, Westlaw Journals, Quicklaw Journals, Commentary, Westlaw Words & Phrases, law school, law society and law firm websites

Print – Canadian Legal Literature, Words & Phrases

Class 12 – *Memo Writing II* (2 hrs.)

- applying Memo Writing I to work on memo assignment
(includes 1 hour Tutorial for 1/3 of class)
-

Class 13 – *Regulatory Research: Selected Research Issues* (2 hrs.)

- researching administrative tribunal decisions, rules, etc

Learning Objectives:

- learn about the different research tools available for researching administrative tribunal decisions, and related law, policies, and procedures, and how research in these areas may differ from traditional case law and legislative research
(includes 1 hour Tutorial for 1/3 of class)
-

Class 14 – *Legal Writing: Opinions and Facta* (2 hrs.)

- moving from a legal memorandum to an opinion
- writing a factum

Learning Objectives:

- understand the difference between a legal memorandum and legal opinion
- understand the difference between legal memorandum and opinion writing (objective writing) vs. factum writing (persuasive writing)

References:

*Rothstein, Marshall, "It's English, But What's Your Point? Writing Factums That Even a Judge Can Understand", pp. 1-14 in Cromwell

Laskin, John J.A., "Forget the Wind Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums", (1999),

www.ontariocourts.ca/coa/ps/speeches/forget.htm (Under Publications & Speeches - Archives)

Class 15 – Civil Procedure Research and Writing (2 hrs.)

- introduction to civil procedure – steps in the process
 - research of civil procedure issues
 - legal writing: selected court documents
-

Class 16 – Legal Writing – Solicitor Practice (2 hrs.)

- drafting of selected documents in solicitor practice
-

Class 17 – *Research in Practice– Topical Research* (2 hrs.)

This session will focus on practical research issues arising out of legal practice

Learning Objectives:

Apply research and analysis to practical issues arising in practice

Class 18 – Review of Legal Research and Writing in Practice (2 hrs.)

- selected legal research problems
-

